Dunlap v. G&L Holding Group, Inc., 381 F.3d 1285 (11th Cir. 2004), relied upon by Respondent, raises an additional split in the circuits and, thus, an additional ground for review. In the view of the *Dunlap* court, because ideas are not protected by copyright, ideas in a copyrighted work are not within the subject matter of copyright; "[t]hus, we conclude that a plaintiff's claim for conversion of his ideas—*even original ideas expressed in a tangible medium*—is not pre-empted by the Copyright Act." *Id.* at 1297 (emphasis added). As *Dunlap* itself recognized, its holding is diametrically opposed to *Berge*, 104 F.3d at 1463, in which the Fourth Circuit ruled that ideas in a copyrighted work fall within the subject matter of copyright and held a claim for conversion of ideas to be preempted by the Copyright Act. *Dunlap*, 381 F.3d. at 1295 n.18; s*ee also Briarpatch*, 373 F.3d at 306 (ideas within a screenplay are within the subject matter of copyright).

The district court cases cited in the Response further confirm the existence of a split. In his string cites of district court authorities that purportedly demonstrate the absence of a split (Response at pp. 12-13), Respondent cites to an unpublished opinion, a withdrawn opinion and other inapplicable case authority. These district court decisions are irrelevant. To the extent Respondent cites to proper district court authorities that found no preemption, contrary to Respondent's assertion, those decisions do not represent the majority view on implied contract claims. *Fischer v. Viacom Int'l, Inc.*, 115 F. Supp. 2d 535, 541-42 (D. Md. 2000) ("the majority of courts addressing the issue have found that the Act *preempts* implied-in-fact contracts") (citing cases) (emphasis added); Petition at p. 11 n.2, citing cases. At best, the cited case authorities show confusion and inconsistency in the

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analyses. (Petition at pp. 14-17.) Also, *Wrench* involved ideas for a character, not a copyrighted screenplay. 256 F.3d at 449.

district courts,[7] further underscoring the deep division in the case authorities addressing copyright preemption and the timeliness for this Court to grant the petition and clarify the existing morass.

CONCLUSION

Respondent mischaracterizes the issues before the Court. Petitioner does not contend that ideas can never be protected under state law or that the Copyright Act was intended to "kill contract claims." (Response at pp. 13, 15.) Nor does Petitioner seek to deny appropriate legal protection to "idea men." (Response at p. 16.) Rather, this Petition addresses the important issue—implicated daily in myriad industries and circumstances across the country—of whether, or in what circumstances does, the allegedly unauthorized use of a copyrighted written work give rise to a state law claim for breach of implied contract that evades copyright preemption. This Petition is necessary because *Grosso*, and the confusion in the circuit courts, have blurred the boundaries between the Copyright Act and state law, contrary to the express intention of Congress and contrary to this Court's pronouncement on copyright law that the "law's boundaries be demarcated as clearly as possible." *Fogerty*, 510 U.S. at 517-18.

For the foregoing reasons, and those set forth in the Petition, Petitioners respectfully request that this Court issue a writ of *certiorari* to review the decision of the United States Court of Appeals for the Ninth Circuit.

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[7] For instance, in *Selby v. New Line Cinema Corp.*, 96 F. Supp. 2d 1053, 1059-62 (C.D. Cal. 2000), the court identified three distinct and inconsistent approaches used in determining copyright preemption of claims for breach of contract. *See also Lennon v. Seaman*, 63 F. Supp. 2d 428, 437-38 (S.D.N.Y. 1999) ("it is important to note that not all of these holdings are based on the same principles").

Respectfully submitted,

ALAN R. FRIEDMAN
MIRAMAX FILM CORP.
375 Greenwich Street
New York, NY 10013
(212) 965-4246

GAIL MIGDAL TITLE
Counsel of Record
JOEL R. WEINER
STACEY MCKEE KNIGHT
JENNIFER L. LALLITE
KATTEN MUCHIN
ROSENMAN LLP
2029 Century Park East
Suite 2600
Los Angeles, CA 90067
(310) 788-4400

Attorneys for Petitioners